Remarks:

Applicants would like to thank Examiner Vaughan for the courtesy and helpfulness provided to Applicants' representative in a telephonic Examiner Interview of December 8, 2009.

Reconsideration of the application, as amended herein, is respectfully requested.

Claims 22 - 46 are presently pending in the application. Claims 22, 29, 30 and 46 have been amended.   Claims 1 - 21 were previously canceled.

On page 2 of the above-identified Office Action, claims 22 and 46 were objected to for an informality. The Examiner's recommended change has been made. Additionally, on page 3 of the Office Action, claims 29 and 30 were objected to for using the term "a user data object". However, Applicants note that the "user data object" of claims 29 and 30 is a **different** user data object than that of claims 22 and 31. In particular, the user data object of claim claims 29 and 30 specify that in case the check by the data provisioning component reveals that the encrypted user data object is **not** usable by the first telecommunications terminal (**negative** check), a different user data object (i.e., having a form that is usable by the first telecommunications terminal) is provided. This feature of

claims 29 – 30 is described in the specification of the

instant application, for example, on page 21 of the

application, lines 7 – 23, which stated, as originally filed:

> **The data provisioning component DBK analyzes the target terminal device characteristics, establishes whether the DRM-protected content NDO currently contained in the multimedia message is suitable for the target terminal device, <u>whether it can provide a more suitable variant as an alternative</u>, or whether a suitable variant of the DRM-protected content cannot be provided.** According to the result of the analysis, the data provisioning component DBK sends a response message containing information to the MMS switching unit EMV in which either the suitability of the already present DRM container object is confirmed or the DRM-protected content is made available in a more suitable form, or it is signaled by means of an error message that neither is the present DRM-protected content suitable nor can it be made available in an alternative suitable form. **If the DRM-protected content <u>is to be made available in a more suitable form</u>, this can be accomplished either by direct integration into the response from the data provisioning component DBK to the MMS switching unit EMV, or only a reference or a pointer is integrated into the response, via which reference/pointer the MMS switching unit EMV can start-a separate transaction <u>for retrieving the DRM-protected content in a suitable form</u> from the data provisioning component DBK.**
> [emphasis added by Applicants]

In order to make this point even more clear, Applicants have

amended claims 29 – 30 to clarify that, if the check is

negative, a **<u>different</u>** user data object is provided, as

supported by the foregoing portion of the original

specification.

The amendments made to the claims herein are believed to

address the informalities raised on pages 2 - 3 of the Office

Action.

Additionally, on page 3 of the Office Action, claims 22 – 46

were rejected as allegedly being indefinite under 35 U.S.C. §

112, second paragraph for not providing a "transmitting step"

consistent with the object of the preamble of claims 22 and

46. Applicants have claim 22 to recite, among other

limitations:

> A method of **determining the usability** of encrypted
> user data objects **by a first telecommunications
> terminal**, [emphasis added by Applicants]

As such, claim 22 relates to a method of **determining the**

usability of encrypted user data objects by a first

telecommunications terminal, which is completely consistent

with the final step of claim 22, which states:

> the switching component **processing the encrypted user
> data object in accordance with the information
> relating to the check**, and notifying the first
> telecommunications terminal thereof. [emphasis added
> by Applicants]

Similarly, Applicants' independent claim 46 has been amended

to recite, among other limitations:

> A telecommunications system **for determining the
> usability of encrypted user data objects by a first**

> **telecommunications terminal,** [emphasis added by
> Applicants]

Thus, Applicants' claim 46 recites a system "for determining
the usability" of encrypted user data objects by a first
telecommunications terminal, which is completely consistent
with the last limitation of claim 46, stating:

> **said switching component configured to process** the
> encrypted user data object **in accordance with the
> information relating to the result of the check,** and
> to notify the at least one first telecommunications
> terminal thereof. [emphasis added by Applicants]

As such, the preambles of Applicants' independent claims 22
and 46 are believed to be consistent with the limitations of
those claims (i.e., the "determining" corresponding to the
"processing" portion of those claims). Thus, Applicants'
claims 22 – 46 are believed to be definite under 35 U.S.C. §
112, second paragraph.

Further, on pages 3 - 4 of the Office Action, claim 29 was
rejected as allegedly being indefinite under 35 U.S.C. § 112,
second paragraph for allegedly defining the data provisioning
component for a second time. Applicants have amended claim 29
to reference "the" data provisioning component, as supported
by page 21 of the instant application, lines 15 – 25 and Fig.
2, dashed arrow "4a".

It is accordingly believed that the claims meet the

requirements of 35 U.S.C. § 112, second paragraph.

On page 6 of the Office Action, claims 22 - 46 were rejected

under 35 U.S.C. § 103(a) as allegedly being obvious over PCT

Publication No. WO 02/42414 to Mostafa (**"MOSTAFA"**) in view of

U. S. Patent Application Publication No. 2002/0077986 to

Kobata et al (**"KOBATA"**).

Applicants respectfully traverse the above rejections.

More particularly, Applicants have amended claims 22 and 46 to

consistently indicate that the user data object being checked

for usability by the first telecommunications terminal is "the

<u>encrypted</u> user data object. Claims 22 and 46 also make it

clear that a content of the **<u>encrypted</u>** user data object is

inaccessible to the switching component, due to the

encryption. For example, claims 22 and 46 recite, among other

limitations:

> …, the switching component **not having access to a
> content** of the encrypted user data object due to the
> encryption;

Applicants claims 22 and 46 have been amended to consistently

recite when the user data object being discussed is the

<u>encrypted</u> user data object, and thus, includes content that,

according to an unambiguous reading of the claim, is not

accessible by the switching component. During the Examiner

Interview, it was discussed that the foregoing limitation was

a "negative limitation". However, M.P.E.P. § 2173.05(i)

states, in part:

> The current view of the courts is that **there is
> nothing inherently ambiguous or uncertain about a
> negative limitation**. So long as the boundaries of the
> patent protection sought are set forth definitely,
> albeit negatively, the claim complies with the
> requirements of 35 U.S.C. 112, second paragraph.
> [emphasis added by Applicants]

Applicants believe that the negative limitation of claims 22

and 46, i.e., that the switching component does **not** have

access to a content of an encrypted user data object,

unambiguously limits the claims, and thus, must be afforded

patentable weight.

However, none of the prior art references cited in the Office

Action teach or suggest, among other limitations of

Applicants' claims, a switching component that does **not have**

access to the contents of the encrypted data due to the

encryption. In particular, the **MOSTAFA** and **KOBATA** references

do not teach or suggest, among other limitations of

Applicants' claims, that the switching component does not have

access to the contents of the encrypted user data object due

to encryption, as required by Applicants' claims.

The Response to Arguments section of the Office Action alleges that **MOSTAFA** and **KOBATA** do not require the switching component to decrypt the data object. However, this cannot be regarded as a (positive) disclosure that the switching components of **MOSTAFA** and **KOBATA** do <u>not</u> have access to the content of the user data objects. **Rather, MOSTAFA explicitly teaches on page 18, lines 22-6 that the MMS relay at the receiving side (MMS relay B) has access to information about the media content.** There is no hint that in case the receiver was in the same network as the sender – as construed in the Office Action – the relay on the receiving side (MMS relay A in this case) should break that rule.

Additionally, the Office Action asserted that the claim would "only require that the switching component need not be able to decrypt the user data object". However, the above claim feature is actually more specific in that it requires the switching component to **<u>not be able</u>** to access the content due to the encryption.

For the foregoing reasons, among others, Applicants' claims are believed to be patentable over the **MOSTAFA** and **KOBATA** references.

However, Applicants' claims are even further distinguished from the prior art. More particularly, the prior art **MOSTAFA** and **KOBATA** references do not teach or suggest, among other limitations of Applicants' claims: 1) that the switching component transmits a "request" for checking the usability of the user data object "together with" the "determined" profiles of the capabilities of the first telecommunications terminal to the data provisioning component; and 2) that the data provisioning component transmits information relating to the usability check.

In particularly, as stated on page 6 of the instant application, because the switching component does not have access to the content of the encrypted user data objects, adaptation of the content of a multimedia message to the characteristics or capabilities of the receiving terminal device is not possible. Applicants have addressed this problem, occurring in systems wherein the switching component does not have access to the content, by providing the determined terminal capabilities to a data provisioning component, **together with a request** to check whether the terminal can use the encrypted data packet. Such is only necessary in a system wherein the switching component does not

have access to the data content, and therefore, cannot adapt the content.

However, in contrast to Applicants' claimed invention, the MOSTAFA and **KOBATA** references do not teach or suggest, among other limitations of Applicants' claims, **that the switching component transmits a <u>request</u> for checking the usability of the user data object <u>together with</u> the <u>determined</u> profile of the capabilites of the first telecommunications terminal to a data provisioning component.**

In particular, the Office Action identifies the data provisioning component with the MMS server and the switching component with the MMS relay A of **MOSTAFA.** However, there is no evidence in **MOSTAFA** that the MMS server would be requested by the MMS relay A for performing a usability check.

The Office Action further identified the profile relating to capabilities of the first telecommunications terminal with the recipient data of **MOSTAFA.** However, there is no hint in **MOSTAFA** that such a request was sent to the MMS server together with determined recipient data (determined profile of the terminal capabilities).

The **KOBATA** reference does not cure the above-discussed deficiencies of the **MOSTAFA** reference. In fact, because neither **KOBATA,** nor **MOSTAFA,** disclose a system wherein the switching component does not have access to the content of the encrypted user data object, there would not be any need in **KOBATA** or **MOSTAFA** to send such a request **together** with a determined terminal profile. Rather, having access to the content, as taught in **MOSTAFA,** the switching unit can make the determination and/or adaptation itself.

Further, the M**OSTAFA** and **KOBATA** references do **not** teach or suggest that the data provisioning component transmits information relating to the result of the usability check to the switching component, as also required by Applicants' claims. In particular, the passages cited in the Office Action as allegedly teaching this limitation are silent about any relevant communication between the MMS server (identified with the data provisioning component) and the MMS relay A (identified with the switching component).

For the foregoing reasons, among others, Applicants' claims are believed to be patentable over the M**OSTAFA** and **KOBATA** references.

It is accordingly believed that none of the references,
whether taken alone or in any combination, teach or suggest
the features of claims 22 and 46. Claims 22 and 46 are,
therefore, believed to be patentable over the art. The
dependent claims are believed to be patentable as well because
they all are ultimately dependent on claim 22.

In view of the foregoing, reconsideration and allowance of
claims 22 -46 are solicited.

In the event the Examiner should still find any of the claims
to be unpatentable, counsel would appreciate receiving a
telephone call so that, if possible, patentable language can
be worked out.

Additionally, please consider the present as a petition for a
one (1) month extension of time, and please provide a one (1)
month extension of time, to and including, December 10, 2009,
to respond to the present Office Action.

The extension fee for response within a period of one (1)
month pursuant to Section 1.136(a) in the amount of $130.00 in
accordance with Section 1.17 is enclosed herewith.

Please provide any additional extensions of time that may be necessary and charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner Greenberg Stemer LLP, No. 12-1099.

Respectfully submitted,

/Kerry Pauline Sisselman/
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For Applicants

December 10, 2009

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